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IN THE
Supreme Court of the United States

OCTOBER TERM, 1946

No. 390

*Petition
not printed*

JACK LESTER BARNES,

Petitioner,

VS.

STATE OF MARYLAND,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF
APPEALS OF THE STATE OF MARYLAND.

**BRIEF AND APPENDIX FOR THE RESPONDENT IN
OPPOSITION TO THE PETITION FOR
WRIT OF CERTIORARI.**

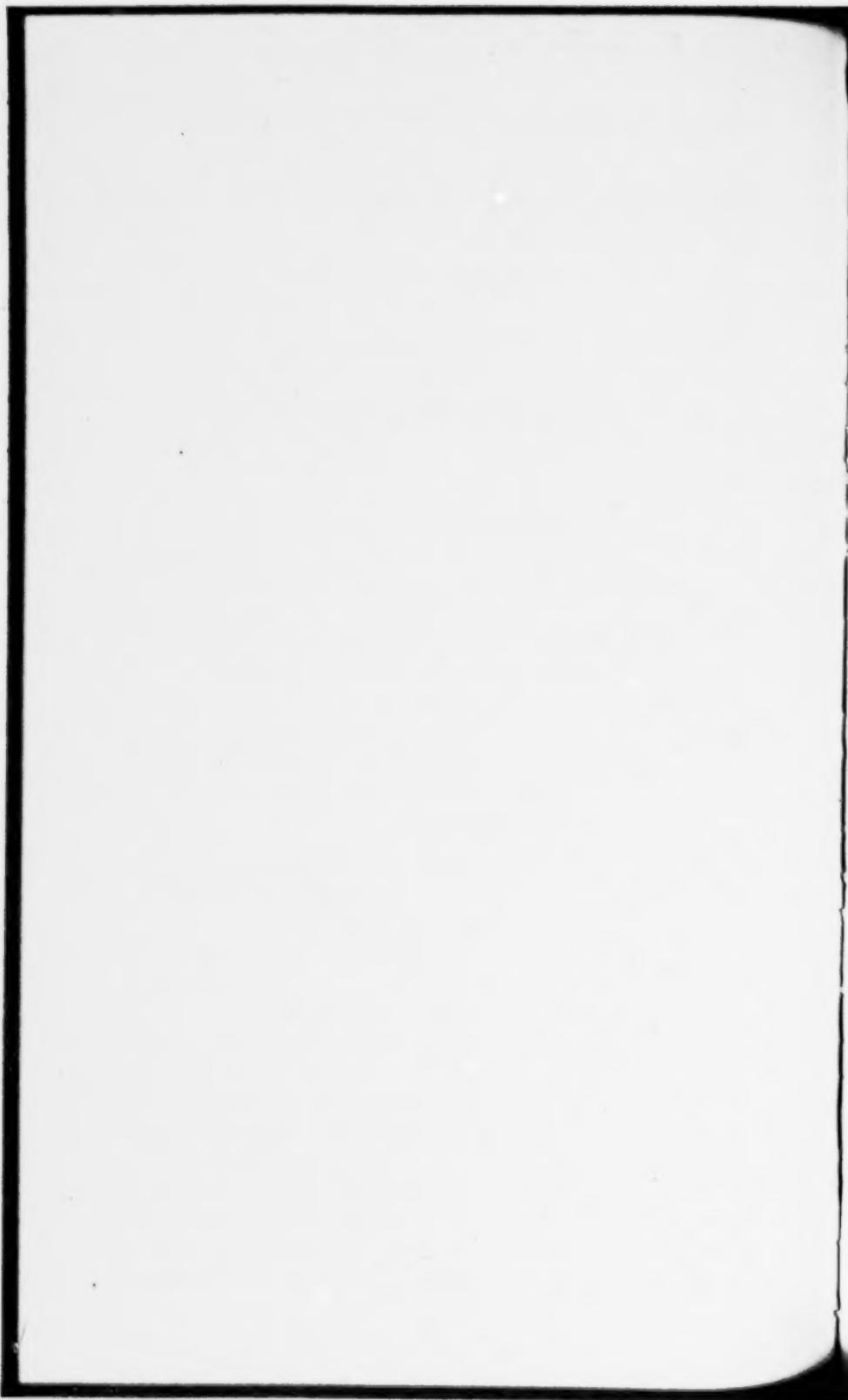
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**BRIEF FOR THE RESPONDENT IN OPPOSITION TO
THE PETITION FOR WRIT OF CERTIORARI.**

OPINION BELOW.

The Opinion of the Court of Appeals of the State of Maryland, (the highest Court of the State), has not yet been officially reported but it is unofficially reported in 47 Atl. (2d) 50. The Opinion, judgment and sentence of the Circuit Court for Prince George's County, of the State of Maryland (the trial court) are not reported but are set forth in the R. Transcript pp. 217-232.

JURISDICTION.

It is respectfully contended by the Respondent, the State of Maryland, that the Supreme Court of the United States should not grant the review by Petition for Writ of Certiorari of the final judgment of the Court of Appeals of Maryland, entered in this cause on the 11th day of April, 1946, affirming the judgment of the Circuit Court for Prince George's County, Maryland, for the reason that no federal question is involved, and that the Petitioner did not, either in the trial court or the Court of Appeals, assert any right under the Constitution of the United States or allege that he had been deprived of his liberty without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States.

STATEMENT OF CASE.

On August 4, 1945, between 2:45 and 3:15 A. M., Lillian Annette Weade, age fifty-three, a citizen of the State of Virginia, and the mother of four sons and a daughter, was choked and raped in the lower berth of a stateroom on a steamboat which on August 3, 1945, she had boarded at Old Point Comfort, Virginia, as a passenger in company with a companion, an elderly woman who shared her stateroom and occupied the upper berth.

The attack took place while the steamboat was in the Potomac River, entirely within the State of Maryland, off Charles County, Maryland, en route from Norfolk, Virginia, to Washington, D. C. The Potomac River forms the boundary between the States of Maryland and Virginia, and the jurisdiction of the State of Maryland extends to the low-water mark on the Virginia shore.

The petitioner, who claimed to be a resident and voter of the State of Virginia, was employed as a cook on the boat. The testimony showed that he gained entrance to the stateroom, accomplished his purpose, and left by way of the stateroom window. His finger prints were found on the window frame and on a washstand in the room. He was seen in the room by the elderly companion of the victim.

At 3:40 A. M. the master of the boat was notified and in company with other officers and members of the naval shore patrol, he immediately went to the crew's quarters, and from the description furnished by the companion, he took the petitioner into custody and confined him on the boat until it reached Washington, at which point the Metropolitan Police detained him.

The petitioner was indicted by the Grand Jury for Prince George's County, Maryland, and upon his arraignment in the Circuit Court for that County, he elected to be tried by the Court without the intervention of a jury. The indictment was returned in that County by virtue of Section 631 of Article 27 of the Annotated Code of Maryland (Flack's edition 1939). The trial was held on November 6, 1945, before Judges Charles C. Marbury and John B. Gray, Jr., and resulted in the conviction of the petitioner on the first count of the indictment, charging him with the crime of rape.

The petitioner filed a special plea, termed plea to the jurisdiction, alleging that he was a citizen of the State of Virginia and that the indictment failed to allege that the person upon whom the offense was committed was not a citizen of the State of Virginia. The State interposed a demurrer to the plea, which demurrer was sustained. The docket entries and the record do not disclose that the peti-

tioner demurred to the indictment. A motion for a new trial was denied and a motion in arrest of judgment was overruled.

On November 16, 1945, the petitioner was sentenced to death by hanging and on the same day noted an appeal to the Court of Appeals of the State of Maryland.

On April 11, 1946, after argument and submission, the Court of Appeals affirmed the judgment of the Circuit Court for Prince George's County.

The petitioner contends that the Circuit Court for Prince George's County did not have jurisdiction to try him, alleging that (although the offense was committed on the Potomac River within the territorial limits of the State of Maryland) he was entitled to be tried in a court of the State of Virginia, by virtue of the Tenth Article of the Compact of 1785 between Maryland and Virginia.

The Tenth Article of the Compact (entered into when the boundary between Maryland and Virginia was in dispute) related to piracies, crimes and offenses committed on certain parts of the Chesapeake Bay and the Pocomoke River and on the Potomac River. Jurisdiction of the courts of either Maryland or Virginia was based upon the concept of the citizenship of the offender and of the person upon whom the offense was committed.

QUESTIONS IN CONTROVERSY.

I.

Was a federal question raised in the State Courts?

II.

Does the construction of Article 10 of the Compact of 1785 between the States of Maryland and Virginia involve a federal question?

III.

Is Article 10 of the Compact in full force and effect, or did it become inoperative by the Award of the Arbitrators in 1877, confirmed by the General Assemblies of Maryland and Virginia, establishing the boundary line between the States at the low-water mark on the southern or Virginia shore of the Potomac River?

SUMMARY OF ARGUMENT.

The transcript of the record in the trial court, the Circuit Court for Prince George's County, fails to disclose that the petitioner raised any Federal question. Likewise, the petitioner did not raise any Federal question in the Court of Appeals of Maryland. In particular, he did not allege in the trial court or in the Court of Appeals that he had been deprived of his liberty without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

Furthermore, the construction of Article 10 of the Compact of 1785 between Maryland and Virginia, is not a federal question but is one for the determination of the State courts.

The respondent contends also that by reason of the establishment of the boundary line between Maryland and Virginia in 1877 at the low-water mark on the southern or Virginia bank of the Potomac River, with a straight line drawn between headlands, any jurisdiction which Virginia may have had over offenses set forth in the Tenth Article terminated and that, therefore, the Tenth Article became inoperative. The boundary was determined by arbitrators appointed by the legislatures of both states and their findings are known as the Black-Jenkins Award of 1877.

The contention of the respondent is also based upon the fact that immediately after the confirmation by Virginia of the Award of the Arbitrators, Maryland in 1880, enacted the statute relating to offenses committed on steamboats passing through more than one county. (Chapter 485 of the Acts of 1880—Article 27, Section 631 of the Annotated Code of Maryland—Flack's Edition, 1939). Chapter 487 of the Acts of 1908 (Article 75, Section 161 of the same Code) provides that the jurisdiction of every county adjoining neighboring states bounded by navigable waters "shall continue to the ultimate limits of the State at the place in question".

The respondent further contends that Virginia has no jurisdiction over offenses committed in the territorial waters of Maryland and has assumed no such jurisdiction because it has passed no statutes providing for the trial and punishment thereof. It is patent that Virginia has recognized this lack of jurisdiction for it has, with Maryland, passed many concurrent acts relating to fish and oysters, which are covered by the Seventh and Eighth Articles of the Compact.

ARGUMENT.

I.

A FEDERAL QUESTION WAS NOT RAISED IN THE STATE COURTS.

Upon the return of the indictment of the petitioner by the Grand Jury of the State of Maryland, in and for Prince George's County, he was arraigned and entered a plea of "not guilty". This plea was subsequently withdrawn and a plea to the jurisdiction was filed. This plea recited merely that the Circuit Court for Prince George's County was without jurisdiction because the petitioner was a citizen of the State of Virginia, and the indictment failed to allege that the person upon whom the offense was com-

mitted was not a citizen of that State. The State's demur-
rer to the plea to the jurisdiction was sustained and a plea
of "not guilty" was re-entered. Following the rendition
of the verdict, but before judgment was pronounced, a
motion for a new trial was filed, in which the petitioner
alleged that the verdict was against the evidence, that the
evidence was insufficient to sustain the verdict, that the
Court was without jurisdiction, that the Court erred in per-
mitting an amendment of the indictment, and that the
State failed to prove that upon his arrest he was taken
before a Justice of the Peace in Prince George's County.
Following the overruling by the trial court of the motion
for a new trial, the petitioner filed a motion in arrest of
judgment. That motion again challenged the jurisdiction
of the Circuit Court for Prince George's County; the con-
tention being that the Compact of 1785 entitled him to be
tried in the State of Virginia. The further questions relat-
ing to the failure of proof that he was taken before a Jus-
tice of the Peace for Prince George's County and the
amendment of the indictment were likewise raised. This
motion was overruled and subsequently sentence was im-
posed.

In none of the pleadings referred to did the petitioner
claim any right, privilege or immunity under the Constitu-
tion or any statute of the United States; and it is respect-
fully contended that the petitioner's failure to raise speci-
fically a federal question bars his right to a writ of cer-
tiorari to review the judgment of the State court.

It is well settled by the decisions of this Court that it
must be made to appear that a federal question was raised
in the State court in order to entitle the petitioner to a
review on certiorari, and that unless it does so appear that
such a federal question was raised in the State court the

writ will be denied. *New York Central and Hudson River Railroad Company, et al., vs. New York*, 186 U. S. 269, 22 S. Ct. 916, 46 L. Ed. 1158. In *Thomas vs. Iowa*, 209 U. S. 258, 28 S. Ct. 487, 52 L. Ed. 782, it was contended that an instruction of the trial judge withdrew from the jury the question and the degree of murder and to that extent denied the plaintiff in error a trial by jury and denied him due process of law in violation of the Fourteenth Amendment of the Constitution of the United States. This Court observed that the judgment of the Supreme Court of Iowa did not contain the slightest allusion to any federal question, but that the Chief Justice of the State court signed a bill of exceptions containing a statement that the question made and discussed by counsel at the hearing in the State Supreme Court, were that by reason of the errors above pointed out, the petitioner was deprived of his liberty without due process of law. Mr. Justice Moody, speaking for this Court, said:

"The Federal question, if it can be found in the record at all, must be found in this statement. It is too late to raise it for the first time in the petition for a writ of error from this court or in the assignments of error here. *Montana ex rel. Haire v. Rice*, 204 U. S. 291, 51 L. ed. 490, 27 Sup. Ct. Rep. 281. All that appears in the statement is that exceptions were taken to certain parts of the charge to the jury, because they 'in effect deprived the plaintiff in error of his liberty without due process of law;' and that the question thus raised was discussed before the supreme court of the state. But something more than this vague and inferential suggestion of a right under the Constitution of the United States must be presented to the state courts to give us the limited authority to review their judgments which exist under the Constitution and is regulated by Sec. 709 of the Revised Statutes (U. S. Comp. Stat. 1901, p. 575). A mere claim in the

court below that there has been a denial of due process of law does not of itself raise a Federal question with sufficient distinctness to give us jurisdiction to consider whether there has been a violation of the 14th Amendment of the Constitution. See *Clarke v. Mc-Date*, 165 U. S. 168, 172, 41 L. ed. 673, 674, 17 Sup. Ct. Rep. 284; *Miller v. Cornwall R. Co.*, 168 U. S. 131, 134, 42 L. ed. 409, 410, 18 Sup. Ct. Rep. 34; *Harding v. Illinois*, 196 U. S. 78, 88, 49 L. ed. 394, 397, 25 Sup. Ct. Rep. 176."

See also *Wilson v. Cook*, U. S., Adv. Sh. 90 L. Ed. 609. It is respectfully submitted, therefore, that the failure of the petitioner to raise or even to allude to any federal right or question in the State courts is sufficient to deny him the right to a review in this Court.

II.

THE CONSTRUCTION OF ARTICLE 10 OF THE COMPACT OF 1785 BETWEEN THE STATES OF MARYLAND AND VIRGINIA DOES NOT INVOLVE A FEDERAL QUESTION.

The petitioner in his brief cites the case of *Marlatt vs. Silk* (1837) 11 Pet. 1, 9 L. Ed. 609, wherein it was held that the rule of decision in that case was of an international character; and there also was cited the case of *Green vs. Biddle*, (1821) 8 Wheaton 1, 5 L. Ed. 547, to the effect that certain acts of the State of Kentucky were a violation of the Seventh Article of a Compact with the State of Virginia and were, therefore, unconstitutional. Both of these cases refer to private rights under land titles and are not applicable in the matter now pending before this Court.

In the case of *Hamburg American Steamship Company vs. Grube*, 196 U. S. 407, 25 S. Ct. 352, 49 L. Ed. 529, which was an action to recover damages for death occasioned by

a collision of two ships in waters off the coast of New Jersey, Mr. Chief Justice Fuller, speaking for the Court, said:

"As to the first ground, the contention is that the Act of Congress of June 28, 1834, (4 Stat. at L. 708, Chap. 126) giving consent to the agreement or compact between the States of New Jersey and New York in respect to their territorial limits and jurisdiction, dated September 16, 1833, vested exclusive jurisdiction in the Federal Government over the sea adjoining the two States. But there is absolutely nothing in the agreement and confirmatory statutes abdicating rights in favor of the United States, and the transaction simply amounted to fixing the boundaries between the two States. N. Y. Laws 1834, p. 8, chap. 8; N. J. Laws 1834, p. 118. The first proposition raised no Federal question."

In a recent case involving the apportionment of the waters of an inter-state stream, this Court, in *Hinderlider vs. La Plata River and Cherry Creek Ditch Company*, 304 U. S. 92, 82 L. Ed. 1202, 58 S. Ct. 803, held that:

"The assent of Congress to the compact between Colorado and New Mexico does not make it a 'treaty or statute of the United States' within the meaning of Section 237(a) of the Judicial Code, 28 U. S. C. A., Section 344, and no question as to the validity of the consent is presented."

On the authorities here cited, the respondent respectfully contends that the construction of Article 10 of the Compact of 1785 does not involve a Federal question.

III.

ARTICLE 10 OF THE COMPACT IS NOT IN FULL FORCE AND EFFECT AND IT BECAME INOPERATIVE BY THE AWARD OF THE ARBITRATORS IN 1877, WHICH WAS CONFIRMED BY THE GENERAL ASSEMBLIES OF MARYLAND AND VIRGINIA, ESTABLISHING THE BOUNDARY LINE BETWEEN THE TWO STATES AT THE LOW-WATER MARK ON THE SOUTHERN OR VIRGINIA SHORE OF THE POTOMAC RIVER.

In the event the court concludes that a Federal question was properly raised in the State courts and that the construction of Article 10 of the Compact of 1785, as applied to the present case, involves a federal question, it is respectfully contended that the decision of the Court of Appeals, that the Article is now inoperative, was correct and that the judgment should be affirmed.

A full discussion of the causes which led to the convention at which commissioners of Maryland and Virginia met at Mt. Vernon, Virginia, on March 28, 1785, and proposed a Compact, which was confirmed by the Legislatures of both States, is set forth in *Scharf's History of Maryland*, Volume 2, pages 528, et seq.: *Henry's life of Patrick Henry*, Volume 2, page 176; *Bancroft's History of the Constitution of the United States*, Volume 1, page 151; and *Rives' Madison*, Volume 2, page 58. See also the *Maryland and Virginia Boundary Controversy*, by Louis N. Whealton, and *Report on the Location of the Boundary Line Along the Potomac River between Virginia and Maryland In Accordance with the Award of 1877*, by Edward B. Mathews and Wilbur A. Nelson. A brief summary of the events which led up to the controversy and the efforts to bring about its settlement is set forth below.

Due to the disputes between Maryland and Virginia relating to the navigation of the bays and rivers in and adjoining their respective territories, the collection of custom

duties and the exercise of fishing and riparian rights, and to provide for jurisdiction of the courts of the two States over offenses committed in the disputed areas, it was deemed advisable that a convention be held at which delegates of Maryland and Virginia would participate for the purpose of adjusting their difficulties.

This was accordingly done and the Compact of 1785 was the result of their work. By Chapter 1 of the Acts of 1785, the Compact was approved by the General Assembly of Maryland (Appendix p. 1). See also Chapter 18 of the Acts of 1786, General Assembly of Virginia — Virginia Code, 1942, Title 3, Chapter 3, Section 14. We are not concerned here with the controversy between Maryland and Virginia relating to the disputed line running from Smith's Point to Watkins' Point, but only with that relating to the Potomac River. Several attempts were made by joint action of the States to settle their dispute and to determine the boundaries, but it was not until 1877 that a common boundary was established.

The history of Maryland and Virginia shows a long continuing series of disputes over the boundary lines between the two States.

James I, in 1606, issued certain letters patent authorizing The London Company to settle between the thirty-fourth and forty-first degrees North latitude, and vested property rights in that Company to the land extending along the coast fifty statute miles on both sides of the first chosen site, and reaching into the interior one hundred statute miles. All lands within the area were to belong to The London Company. Jamestown was settled in the year 1607 under this grant. These were the first boundary lines of Virginia. In 1609, The London Company was issued a new patent which granted to it "all those lands—in that part

of America called Virginia, from the point of land called Cape or Point Comfort. All along the seacoast to the northward two hundred miles; and from the said Cape or Point Comfort all along the seacoast to the southward two hundred miles; and all that space and circuit of land lying from the seacoast of the precinct aforesaid, up into the land from sea to sea, west and northwest; and also all the highlands within one hundred miles along the coast of both seas of the precinct aforesaid."

It is to be noted that in the two documents mentioned there was no boundary indicated by natural objects or definite land marks.

In the year 1688, King James II granted to Lord Culpeper what is now known as the Northern Neck of Virginia, which was described in the patent as follows: "All that entire tract, territory or parcel of land situate, lying, and being in Virginia in America and bounded by *and within the first heads or springs of the rivers of Tappahannock, Rappahannock and Quiriough and Patawonuck* rivers, *the courses of said rivers from their first heads or springs* as they are clearly called and known by the inhabitants, and the description of those parts and the bay of the Chesapeake, *together with the said rivers themselves and all the highlands within the outermost banks thereof*, and the soil of all and singular the premises, and all lands, woods, underwood, timber, and trees, wayes, mountains, swamps, marshes, waters, rivers, ponds, pools, lakes, water courses, fishings, streams, havens, ports, harbours, bays, creeks, ferries, with all sorts of fish as well as whales, sturgeons and other royal fish—to have, hold and enjoy all the said entire tract, territory or parcel of land and every parts and parcels thereof—to the said Thomas, Lord Culpeper, his heirs and assigns forever."

In 1632, King Charles I made a grant to Lord Baltimore including substantially what is now the State of Maryland, in these words: "all that Part of the Peninsula, or chersonese lying in the Parts of America, between the Ocean on the East, and the bay of Chesapeake on the West, divided from the Residue thereof by a Right Line drawn from the Promontory, or Head Line, called Watkins' Point, situate upon the Bay aforesaid, near the river of Wighco, on the West, unto the Main Ocean on the East; and between that Boundary on the South unto that Part of the Bay of Delaware on the North, which lieth under the Fortieth Degree of North Latitude from the Aequinoctial, where New England is terminated; and all the Tract of that Land within the Metes underwritten, (that is to say,) passing from the said Bay, called Delaware Bay, in a right line, by the degree aforesaid, unto the true Meridian of the first Fountain of the River of Pattowmack, thence, verging toward the South, unto the further Bank of the said River, and following the same on the West and South, unto a certain place called Cinquack, situate near the Mouth of the said River, where it disembogues into the aforesaid Bay of Chesapeake, and thence by the shortest line unto the aforesaid Promontory, or Place called Watkins' Point * * *."

It is readily seen that the conflicting grants provided a fertile field for controversy which inevitably resulted and continued for generations. Virginia, by her first Constitution adopted June 29, 1776, surrendered her claim to the territory of Pennsylvania and Maryland, but definitely asserted her right to the free navigation and use of the Potomac and Pocomoke Rivers, and to property on the Virginia shores and strands thereof as follows: "the territories, contained within the charter, erecting the colonies of Maryland, Pennsylvania, North and South Carolina are

hereby ceded, released and forever confirmed to the people of these colonies respectively, with all the rights of property, jurisdiction and government and all other rights whatsoever which might at any time heretofore have been claimed by Virginia, excepting the free navigation and use of the rivers Patomac and Pokomoke, with the property of the Virginia shores and strands bordering on either of said rivers and all improvements, which have been or shall be made thereon." (See Washington Airport, Inc. v. Smoot Sand & Gravel Corp., 44 F2, 342).

The three points in the resulting controversy were as follows:

(1) Maryland claimed the entire Potomac River under her charter, while Virginia also claimed the River on similar grounds.

(2) In the Charter to Lord Baltimore, granted in 1632, "the first fountain of the Potomac was to be the western boundary line of Maryland separating it from Virginia." The Potomac River has two branches, one called the North Branch and one called the South Branch. Maryland claimed that the South Branch was the first fountain, and that all land between the two branches was possessed by Maryland. Virginia, of course, disputed this and claimed the North Branch to be the first source.

(3) The place where the boundary between Maryland and Virginia met the shore on the easternmost side of the Chesapeake Bay was called "Watkins' Point" by the grant to Lord Baltimore. The exact location of this Point was in dispute for many years; Virginia claimed that it was located farther North than the Point known today as "Watkins' Point". Maryland insisted that it was at the Point now known as "Watkins' Point".

By Chapter 247 of the Acts of 1874 (Appendix p. 7) and Chapter 198 of the Acts of 1876 (Appendix p. 8) of the General Assembly of Maryland, and by Chapter 135 of the Acts of 1874 (Appendix p. 18), and Chapter 48 of the Acts of 1875—1876 (Appendix p. 20) of the General Assembly of Virginia, both States provided for the appointment of arbitrators to fix the boundary lines, and inserted the following provision in each of the Acts:

“* * * provided, however, that neither of the states, nor the citizens thereof, shall, by the decision of the said arbitrators, be deprived of any of the rights and privileges enumerated and set forth in the Compact between them entered into in the year 1785, but that the same shall remain to and be enjoyed by the said states and the citizens thereof, forever.”

On January 16, 1877, an Opinion and Award of the Arbitrators, known as the “Black-Jenkins Award”, was made (Appendix p. 26) whereby the boundary between the two States was definitely established on the southern or Virginia shore of the Potomac River, at low-water mark.

At page 6 of the publication known as “Opinion and Award of Arbitrators of the Maryland and Virginia Boundary Line”, published in 1877, is this statement:

“The State of Virginia, through her Commissioners and other public authorities, adhered for many years to her claim for a boundary on the left bank of the Potomac, but the gentlemen who represented her before us expressed with great candor their own opinion that a true interpretation of the King’s concession would divide the river between the states by a line running in the middle of it. This latter view they urged upon us with all proper earnestness, and it was opposed with equal zeal by the counsel for Maryland, who contended that the whole river was within the limits of the grant to Lord Baltimore.”

The action of the arbitrators in making the award was ratified and confirmed by Virginia by Chapter 246 of the Acts of 1877-1878 (Appendix p. 23), and by Maryland, by Chapter 274 of the Acts of 1878 (Appendix p. 10).

The United States gave its consent to this award as an agreement or compact between the respective States by the Act of March 3, 1879, Chapter 196, 20 Stat. at Large 481 (Appendix p. 29). It will thus be observed that as result of this arbitration and award, there was given to the State of Maryland exclusive jurisdiction and government over the Potomac River, thereby confirming the call in the Charter to Lord Baltimore for the further or southern bank of said stream. *Morris v. U. S.*, 174 U. S. 196, 43 L. ed. 946, affirming *U. S. v. Morris*, 23 Wash. Law Rep. 549; *Maryland v. West Virginia*, 217 U. S. 1, 54 L. ed. 645; *Maryland v. West Virginia*, 217 U. S. 577, 54 L. ed. 888; *Marine R. & C. Co. v. U. S.*, 257 U. S. 47, 66 L. ed. 124; *Washington Airport Inc. v. Smoot Sand & Gravel Corp.*, 44 F2 342.

Thus, the boundary dispute which had existed since colonial times was finally concluded. There remained no longer a doubtful line of division between Maryland and Virginia. Hence, the basis for conferring jurisdiction upon the courts of Maryland in certain cases, and upon the courts of Virginia in other cases, as provided in the Tenth Article, all as a result of the doubtful boundary, was utterly destroyed by the award.

The State of Maryland contends that the Black-Jenkins Award of 1877, by which the boundary between Maryland and Virginia was established with certainty and precision, rendered obsolete and ineffective so much of the Tenth Article of the Compact of 1785 as attempted to provide for the jurisdiction to be exercised by the courts of the

two States for the prosecution of offenses occurring in the waters of the Chesapeake Bay, Pocomoke and Potomac Rivers where the division line was doubtful. If this were not so, the courts of Virginia would find themselves in the very anomalous position of exercising jurisdiction over persons, and the offenses committed by them, on the Potomac River within the State of Maryland and entirely beyond the limits of the Commonwealth of Virginia.

In *Washington Airport vs. Smoot Sand and Gravel Corp.*, 44 F2 342, 344, Judge Parker said:

"It would have been absurd to have confirmed the right of property in the Virginia shores to the citizens of Virginia and at the same time to have reserved to the State of Maryland political jurisdiction over those shores, so that controversies over titles thereto would be justiciable only in Maryland and crimes committed thereon punishable only in Maryland Courts."

To be sure, the framers of the Compact of 1785 did not intend that great document to produce such absurd results. So long as the doubt as to the location of the true boundary between the States existed—Maryland on the one hand claiming to the South bank of the Potomac River, and Virginia on the other hand claiming that its Commonwealth extended to the North bank of the Potomac River—it was imperative that means be provided whereby one or the other of the States could prosecute persons charged with offenses committed on those waters. The lack of certainty of the true location of the boundary gave rise to that portion of the Tenth Article of the Compact. It would be strange indeed if the location of the true boundary line between the States were of academic importance only and thus necessitated resorting to an artificial expedient, namely, that of arbitrarily vesting jurisdiction in the courts of one State or the other, without regard to the

place where the offense was actually committed. In this connection, it is worthy to note that in "The Final Report of the Virginia Commissioners on the Maryland-Virginia Boundary" in 1874, at page 29, the Commissioners made this observation:

"They have omitted to notice what is called the Compact between the two States in the year 1785, because it was a joint Act which did not pretend even to fix boundaries; because it expressly assumed certain boundaries to be in dispute and unsettled; because it was but a temporary expedient to regulate commerce and navigation between the two States; and because in that respect, if not in all respects, it has been superseded by the adoption of the Constitution of the United States."

In Binney's Case, 2 Bland (Maryland) 99, 126, the Chancellor said:

"The general scope and object of that compact was, not to fix and give a legal character to any natural subject whatever; in that respect it did not profess to alter, or to stipulate for anything; throughout it speaks of waters, which are by nature navigable; and regulates the terms and manner in which the natural navigation is to be conducted by the citizens of the contracting parties. The first nine articles cannot possibly be applied in any other way. The tenth establishes certain regulations respecting piracies, crimes, and offenses, and for any violence, injury, or trespass, to or upon the property, or lands of the other adjacent to the said bay or river, &c. Piracy is a name given to no offence committed within the body of a county; but only to crimes upon bays and rivers, or any tide-water, considered as an arm of the sea, not within the body of a county; but originally and properly within the jurisdiction of the admiralty. This provision respecting piracy, therefore, clearly confines the whole article to acts done on tide-water, or abroad, and not within

the body of any county; and of which the Courts of common law could not otherwise have jurisdiction." (Italics supplied).

See also *Middlekauff v. LeCompte*, 149 Md. 621.

In *Biscoe v. State*, 68 Md. 294, this Court held that the Circuit Court for St. Mary's County had jurisdiction over an offense committed on the Potomac River, and referred to the Virginia Compact of 1785 as recognizing the jurisdiction of the Circuit Court of the several Counties lying on that River. Nowhere was the award of the arbitrators mentioned, or the reasons underlying the Tenth Article of the Compact. But the Court did say that

"the Potomac river being part of the State, and subject therefore to its jurisdiction, the Circuit Courts of the several counties bordering on said river, as common law courts, exercise criminal jurisdiction over offenses committed on said river opposite such counties. And the exercise of this jurisdiction was recognized by the Legislature in ratifying the compact made with the State of Virginia, for although jurisdiction was in a certain class of offenses conceded to that State, yet it provided that offenses committed by citizens of Maryland against its own citizens, should be tried by the courts of this State having jurisdiction over such offenses. And it is well known that the County Courts of the several counties lying on the Potomac, at that time exercised a common law jurisdiction over offenses committed on its waters opposite such counties. We have then by the Act of 1785, ch. 1, a recognition of the jurisdiction of these counties over offenses committed on the Potomac river, if any such recognition be needed."

The jurisdiction referred to in the *Biscoe* case has now been enlarged.

By Chapter 487 of the Acts of 1908 of the General Assembly of Maryland, codified as Article 27, Section 633, and Article 75, Section 161 (Annotated Code of Maryland, 1939 ed.), it was provided that:

"The jurisdiction of every county bounded at any point by navigable waters shall extend from the shore to the inside of the channel which shall be regarded to be the center of said waters, except where said waters adjoin neighboring States, in which case the jurisdiction of the certain counties shall continue to the ultimate limits of the state at the place in question; provided, however, that nothing in this Section or the two following Sections shall be construed as changing such rights as the State of Maryland may have on or under said waters."

Section 633, together with Sections 634 and 635 of Article 27, were removed from the Code by Chapter 26 of the Acts of 1941 because they were duplications of Sections 161, 162 and 163 of Article 75 of the Code. Thus it is clear that the jurisdiction of the Circuit Court of Prince George's County extends into the Potomac River to the ultimate limits of the State, which, in this instance, is the low-water mark on the Virginia side of the Potomac River. It is readily apparent, therefore, from the foregoing, that the trial court had jurisdiction to hear, try and determine the case on this record.

In the case of *Ex Parte Marsh*, 57 Fed. 719, three citizens of Maryland were arrested for violating oyster laws of Virginia. Wharton and Nelson were charged with offenses committed in Pocomoke Sound in Virginia, and Marsh was charged with an offense committed in Tangier Sound in Virginia. They filed petitions for writs of habeas corpus in the United States Circuit Court for the Eastern District of Virginia. Wharton and Nelson contended that

they were citizens of Maryland and that the courts of Virginia had no jurisdiction over them, while Marsh contended that he was a citizen of Maryland and, as his offense was committed near the doubtful boundary line, the courts of Virginia were without jurisdiction. The court held that the Seventh and Eighth Articles of the Compact of 1785 did not grant a common right of fishing to the citizens of Maryland in the Pocomoke River, and that therefore, the petitioners were subject to trial in a Virginia court. At page 730, the court said:

"As a matter of historical fact, no part of the line between Maryland and Virginia was at the date of the Compact of 1785 more doubtful than the part between Smith's Point and Watkins' Point and no law could be more just and judicious than the 10th Section of the Compact of 1785, containing the provisions relied on. But, the able and distinguished Commissioners appointed by the two States in 1877 had in charge the very duty of making certain and determinate all doubtful parts of the common boundary of the two States. Accordingly, the Commission addressed itself to the task of removing all doubt from this part of the line, as well as others and accomplished its purpose successfully. Probably no Section of a boundary line was ever more clearly, precisely, minutely, definitely or intelligibly laid down and defined than was the portion of the Maryland and Virginia line between Smith and Watkins' Point, and which may be found on pages 63, 64 of the Virginia Code, and page 482 of the twentieth volume of the Statutes at Large of the United States. It is useless, in this opinion, to set out the careful language of the award in defining this line. The duty of the arbitrators was to make it cease to be doubtful, and to establish the line with precision and certainty. They performed that duty, and accomplished that purpose. The line is no longer doubtful, and the defense of the prisoner Marsh is inadmissible. It was competent for the Virginia Court by

which he was convicted to try him and he must be remanded to the custody of the Sheriff of Accomack County, Va." (Italics supplied.)

See also *Wharton v. Wise*, 153 U. S. 155, 38 L. ed. 669.

It should be noted that Maryland, in conformity with Chapter 50 of the Acts of 1929 of the General Assembly of Maryland (See Appendix p. 14) and Virginia, by Chapter 477 of the Acts of 1928 of the General Assembly of that State (See Appendix p. 24), caused the Potomac River boundary line to be delineated accurately on charts and physically marked by means of monuments or reference points. (See "Report on the Marking of the Boundary Line Along the Potomac River in Accordance with the Award of 1877", by Edward B. Mathews and Wilbur A. Nelson.) (See also Appendix pages 12, 13 and 22).

The right of fishing in the Potomac River is common to the citizens of both States according to the provisions of the Seventh Article of the Compact of 1785. The Eighth Article thereof provides that all laws and regulations which may be necessary for the preservation of fish shall be made with the *mutual consent and approbation* of both States. Chapter 929 of the Acts of 1945 of the General Assembly of Maryland repealed most of the provisions of Article 72 of the Code of Maryland, relating to fish and oysters and enacted a new Article. Section 8 of that Chapter is entitled "Concurrent Laws on the Potomac River", and sub-section (j) reads as follows:

"Nothing in this section shall be construed in any way to impair, alter or abridge any rights which either State, or the citizens thereof, may be entitled to, either by, through, under, or against the compact entered into between the States of Maryland and Virginia on the 28th day of March 1783." (sic).

Violations of the fishing laws are prosecuted in accordance with the provisions of the concurrent Acts of the respective State. Such offenses would not be punishable according to the terms of the Tenth Article of the Compact for the reason that the offenses comprehended within that Article are offenses against the citizen as distinguished from offenses against the State. This was so held in *Hendricks vs. Commonwealth*, 75 Va. 934 (1882), wherein a citizen of Maryland was convicted in a Virginia Court on a charge of violating the fishing laws of that State relating to the Potomac River. (See also *Ex Parte Marsh*, 57 Fed. 719; *Wharton vs. Wise*, 153 U. S. 155, 38 L. Ed. 669).

The statutes of the state of Virginia do not make any specific provision for the prosecution of those offenses set forth in the Tenth Article; however laws relating to fishing in the Potomac River (concurrent acts passed in conformity with the Seventh and Eighth Articles) are contained in Chapter 129, Sections 3299 to 3305 (c), inclusive, entitled "Potomac River Statutes", of Title 27, Virginia Code, 1942.

The Legislature of Maryland, by the passage of Chapter 485 of the Acts of 1880 (Article 27, Section 631) relating to offenses on steamboats and by Chapter 487 of the Acts of 1908 (Article 27, Sections 633, 634 and 635 and Article 75, Sections 161, 162 and 163) relating to boundaries and jurisdictional matters, hereinbefore referred to, recognized that the Black-Jenkins' Award of 1877 set the exterior limits of the State of Maryland along the Potomac River at low-water mark on the Virginia shore. By such action, the State of Maryland asserted complete and exclusive jurisdiction over that river, save as limited by the Seventh and Eighth Articles and the concurrent Acts relating to fishing.

This is made more apparent by reference to Senate Joint Resolution No. 17 (Appendix, page 16), adopted at the 1945 Session of the Maryland Legislature. This Resolution authorized the Governor to appoint a Commission to confer with a similar Commission from Virginia for the purpose of studying the Compact of 1785 and the concurrent legislation relating to fishing. The prosecution of offenses under the Tenth Article is not mentioned in the Resolution. This amounts to further legislative recognition of the fact that the Tenth Article is not applicable since the Black-Jenkins' Award.

The several Acts authorizing the appointment of the arbitrators contained the provision, previously quoted, that neither of the States, nor their citizens should, by the decision of the arbitrators, be deprived of any of the rights and privileges set forth in the Compact. It is manifest that these provisions related to the rights and privileges of property along the river bank, of fishing, and of navigation and of commerce. The lack of certainty as to the definite boundary of each State gave rise to the temporary expedient set forth in Article Ten. The designation of the State wherein the offender was to be subjected to prosecution was not a right or privilege, conferred either upon the States or the citizens, but was a matter of convenience and necessity in furtherance of the proper administration of justice, in order that prosecutions would not be defeated on jurisdictional grounds.

The provisions in this Article, that the offender "shall be tried in the court * * * which have legal cognizance" of the offense are not analogous to the provisions of the Sixth Amendment to the Constitution of the United States, viz. that:

"* * * the accused shall enjoy the *right* to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed."

That amendment confers a vested, constitutional right, upon the accused, to a trial in a Federal Court, which can be neither abridged nor denied. The Tenth Article conferred no such right or privilege on the accused, for it consisted merely of an agreement between the two States as to the place where the accused should be tried as a matter of expediency.

As was very properly observed by the Court of Appeals of Maryland (47 A 2d 50, 61):

"We find no intention on the part of either State in the Tenth Section to barter away permanently such jurisdiction, and need not inquire into the power of either to do so. The Legislatures and the courts of both States, as we have shown, have construed it to mean that as soon as the boundary of Maryland was established at the low-water mark on the Virginia shore, the Virginia jurisdiction over offenses on the Potomac River ceased by operation of law, and complete jurisdiction remained in the Maryland courts because the river was determined to be within her territorial limits."

The Court said further that:

"* * * when the obvious reason for the agreement has been done away with by the parties, that part of the agreement affected falls with the subsequent change in the circumstances."

In *Chastelton Corp. vs. Sinclair*, 264 U. S. 543, 68 L. Ed. 841, 44 S. Ct. 405, Mr. Justice Holmes, speaking for this Court, said:

"A law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change, even though valid when passed."

In *Great Northern Railway Co. vs. United States*, 315 U. S. 262, 86 L. ed. 836, 62 S. Ct. 529, Mr. Justice Murphy, speaking for this Court, said:

"But we are not limited to the lifeless words of the statute and formalistic canons of construction in our search for the intent of Congress. The Act was the product of a period, and, 'Courts, in construing a statute, may with propriety recur to the history of the times when it was passed'."

See also *United States vs. Carolene Products Co.*, 304 U. S. 144, 82 L. ed. 1234, 58 S. Ct. 778; and *Nashville, etc., Ry. Co. vs. Walters*, 294 U. S. 405, 79 L. Ed. 949, 55 S. Ct. 486.

When the Virginia courts were organized in 1776-1777, the body of the original jurisdiction fell to the general court (9 Hennings Statutes 401). In 1779, Chapter 26 was adopted (10 Hennings Statutes 98) giving the court of admiralty of Virginia jurisdiction over all maritime cases "except those wherein any parties may be accused of capital offenses". That State, in 1776, also passed a law which was re-enacted in 1792 giving the General Court jurisdiction to try offenses against the Commonwealth committed by any citizens thereof "in any place out of the jurisdiction of common law in this Commonwealth and all felonies committed by citizens against citizens in any such place other than the high seas". This Act, which gave the General Court jurisdiction to try cases which might occur on the Potomac River, was repealed in 1819. In that year, however, and before that repeal became effective, the case of *Commonwealth vs. Gaines*, 2 Va. Cas. 172, was decided. The court, by majority opinion, held that the General Court had power before the passage of the Act of 1786 to try capital offenses excluded from the jurisdiction of the admiralty court occurring on the Chesapeake Bay, and such of its tributaries as were out of the jurisdiction of

the courts of common law. There was, in this case, a strong minority opinion which held that the Act of 1786 was passed to provide a tribunal to try cases occurring under the Compact of 1785 (the only reported Virginia case dealing with the Tenth Article of the Compact) and that the General Court had no such jurisdiction before the Act of 1786. In 1895, the Supreme Court of Appeals of Virginia adopted, in the case of *Strouther vs. Commonwealth*, 92 Va. 789, 22 S. E. 852, 53 Am. St. Rep. 852, the minority view in *Commonwealth vs. Gaines*. The court stated that its opinion was based on the construction of a statute "which disappeared from our laws in 1819, and it may be fairly presumed and was repealed because the Legislature preferred that the rule in Virginia should continue as at common law.

It is the contention of the respondent that since 1819 Virginia has passed no law providing for the punishment of extra-territorial offenses, save those offenses arising under the concurrent Acts passed by Maryland and Virginia regulating fishing on the Potomac River, in conformity with the Seventh and Eighth Articles of the Compact of 1785.

The court held in *Anderson vs. Commonwealth*, 100 Va. 860, 42 S. E. 865, that the Virginia courts had no extra-territorial jurisdiction. In the comparatively recent case of *Farewell vs. Commonwealth* (1937), 167 Va. 475, 189 S. E. 321, the court held that:

"The venue is the element of territorial jurisdiction. As in all criminal cases every crime to be punished in Virginia must be committed in Virginia.

"So murder, rape or robbery must be committed within the confines of this State to give jurisdiction to its courts."

It is respectfully contended, therefore, that the reasons which gave rise to the incorporation in the Compact of the Tenth Article thereof having ceased to exist upon the ratification by Maryland and Virginia of the Black-Jenkins Award of 1877, that provision of the Compact has lost its force and vigor and may be disregarded.

CONCLUSION.

For the reasons heretofore assigned, it is respectfully contended that the writ of certiorari should not be granted.

Respectfully submitted,

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APPENDIX TO RESPONDENTS' BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI.

ACTS OF THE GENERAL ASSEMBLY OF MARYLAND.

CHAPTER I.

ACTS OF 1785.

An ACT to approve, confirm and ratify, the compact made by the commissioners appointed by the general assembly of the commonwealth of Virginia, and the commissioners appointed by this State, to regulate and settle the jurisdiction and navigation of Patowmack and Pocomoke rivers, and that part of Chesapeake bay which lieth within the territory of Virginia.

WHEREAS, at a meeting of the commissioners appointed by the general assemblies of the commonwealth of Virginia and the State of Maryland for forming a compact between the two States, to regulate and settle the jurisdiction and navigation of Patowmack, Pocomoke rivers, and that part of Chesapeake bay which lieth within the territory of Virginia, to wit, George Mason and Alexander Henderson, Esquires, on the part of the commonwealth of Virginia, and Daniel of Saint Thomas Jenifer, Thomas Stone, and Samuel Chase, Esquires, on the part of the State of Maryland, at Mount Vernon in Virginia, on the twenty-eighth day of March, in the year one thousand seven hundred and eighty-five, the following compact was mutually agreed to by the said commissioners.

FIRST, The Commonwealth of Virginia disclaims all right to impose any toll, duty or charge, prohibition or restraint, on any vessel whatever sailing through the capes of Chesapeake bay to the State of Maryland, or from the said State through the said capes outward bound, and agrees that the waters of Chesapeake bay, and the river Pocomoke, within the limits of Virginia, be forever con-

sidered as a common highway, free for the use and navigation of any vessel belonging to the said State of Maryland, or any of its citizens, or carrying on commerce to or from the said State, or with any of its citizens, and that such vessel, inward or outward bound, may freely enter any of the rivers within the commonwealth of Virginia as a harbour, or for safety against an enemy, without the payment of port duties, or any other charge; and also that the before-mentioned parts of Chesapeake bay and Pocomoke river be free for the navigation of vessels from one part of the State of Maryland to another.

SECOND, The State of Maryland agrees, that any vessel belonging to the commonwealth of Virginia, or any of its citizens, or carrying on commerce to or from the said commonwealth, or with any of its citizens, may freely enter any of the rivers of the said State of Maryland as a harbour, or for safety against an enemy, without the payment of any port duty, or any other charge.

THIRD, Vessels of war, the property of either State, shall not be subject to the payment of any port duty, or other charge.

FOURTH, Vessels not exceeding forty feet keel, nor fifty tons burthen, the property of any citizen of Virginia or Maryland, or of citizens of both States, trading from one State to the other, only, and having on board only the produce of the said States, may enter and trade in any part of either State, with a permit from the naval officer of the district from which such vessel departs with her cargo, and shall be subject to no port charges.

FIFTH, All merchant vessels (except such as are described in the fourth article) navigating the river Patowmack, shall enter and clear at some naval office on the said river in one or both States, according to the laws of the State in which the entry shall be made; and where any vessel shall make an entry in both States, such vessel shall be subject to tonnage in each state, only in proportion to the commodities carried to or taken from such state.

SIXTH, The river Patowmack shall be considered as a common highway for the purpose of navigation and commerce to the citizens of Virginia and Maryland, and of the United States, and to all other persons in amity with the said States trading to or from Virginia or Maryland.

SEVENTH, The citizens of each state respectively shall have full property in the shores of Patowmack river adjoining their lands, with all emoluments and advantages thereunto belonging, and the privilege of making and carrying out wharfs and other improvements, so as not to obstruct or injure the navigation of the river, but the right of fishing in the river shall be common to and equally enjoyed by, the citizens of both states; provided, that such common rights be not exercised by the citizens of the one state to the hinderance or disturbance of the fisheries on the shores of the other state, and that the citizens of neither state shall have a right to fish with nets or seans on the shores of the other.

EIGHTH, All laws and regulations which may be necessary for the preservation of fish, or for the performance of quarantine in the river Patowmack, or for the preserving and keeping open the channel and navigation thereof, or of the river Pocomoke within the limits of Virginia, by preventing the throwing out ballast, or giving any other obstruction thereto, shall be made with the mutual consent and approbation of both states.

NINTH, Lighthouses, beacons, buoys, or other necessary signals, shall be erected, fixed and maintained, upon Chesapeake bay, between the sea and the mouths of the rivers Patowmack and Pocomoke and upon the river Patowmack at the expense of both states; if upon Patowmack river, at the joint and equal charge of both states, and if upon the beforementioned part of Chesapeake bay, Virginia shall defray five parts, and Maryland three parts, of such expense, and if this proportion shall in future times be found unequal, the same shall be corrected. And for ascertaining the proper places, mode and plans, for erecting and fixing lighthouse, buoys, beacons, and other signals, as aforesaid, both states shall, upon the application of either to the other,

appoint an equal number of commissioners, not less than three or more than five from each state, to meet at such times and places as the said commissioners, or a major part of them, shall judge fit, to fix upon the proper places, mode and plans, for erecting and fixing such lighthouses, beacons, or other signals, and report the same, with an estimate of the expense, to the legislatures of both states, for their approbation.

TENTH, All piracies, crimes or offenses, committed on that part of Chesapeake bay which lies within the limits of Virginia, or that part of the said bay where the line of division from the south point of Patowmack river (now called Smith's Point) to Watkin's Point, near the mouth of Pocomoke river, may be doubtful, and on that part of Pocomoke river within the limits of Virginia, or where the line of division between the two states upon the said river is doubtful, by any persons not citizens of the commonwealth of Virginia, against the citizens of Maryland, shall be tried in the court of the State of Maryland which hath legal cognizance of such offences. And all piracies, crimes and offences, committed on the before-mentioned parts of Chesapeake bay and Pocomoke river, by any persons not citizens of Maryland, against any citizen of Virginia, shall be tried in the court of the commonwealth of Virginia which hath legal cognizance of such offences. All piracies, crimes and offences, committed on the said parts of Chesapeake bay, and Pocomoke river, by persons not citizens of either State, against persons not citizens of either State, shall be tried in the court of the commonwealth of Virginia having legal cognizance of such offences. And all piracies, crimes and offences, committed on the said parts of Chesapeake bay and Pocomoke river, by any citizen of the commonwealth of Virginia, or of the State of Maryland, either against the other, shall be tried in the court of that state of which the offender is a citizen. The jurisdiction of each state over the river Patowmack shall be exercised in the same manner as is prescribed for the before-mentioned parts of Chesapeake bay and Pocomoke river in every respect, except in the case of piracies, crimes and offenses, committed by persons not citizens of either state, upon per-

sons not citizens of either state, in which case the offenders shall be tried by the court of the state to which they shall first be brought; and if the inhabitants of either state shall commit any violence, injury or trespass, to or upon the property or lands of the other, adjacent to the said bay or rivers, or to any person upon such lands, upon proof of due notice to the offender to appear and answer, any court of record, or civil magistrate, of the state where the offence shall have been committed, having jurisdiction thereof, may enter the appearance of such person, and proceed to trial and judgment in the same manner as if legal process had been served on such offender; and such judgment shall be valid and effectual against the person and property of such offender, both in the state where the offender shall have been committed, and also in the state where the said offender may reside, and execution may be issued by the court, or magistrate, giving such judgment, in the same manner as upon judgments given in other cases; or upon a transcript of such judgment properly authenticated, being produced to any court or magistrate of the state where such offender may reside, having jurisdiction within the state, or county where the offender may reside, in cases of a similar nature, such court or magistrate shall order execution to issue upon such authenticated judgment, in the same manner and to the same extent, as if the judgment had been given by the court or magistrate to which such transcript shall be exhibited.

ELEVENTH, Any vessel entering in any port on the river Patowmack, may be libelled or attached for debt by process from the state in which such vessel entered; and if the commercial regulations of either state shall be violated by any person carrying on commerce in Patowmack or Pocomoke rivers, the vessel owned or commanded by the person so offending, and the property on board, may be seized by process from the state whose laws are offended, in order for trial; and if any person shall fly from justice in a civil or criminal case, or shall attempt to defraud creditors, by removing his property, such person, or any property so removed, may be taken on any part of Chesapeake bay, or the rivers aforesaid, by process of the state from

which such person shall fly, or property be removed; and process from the State of Virginia may be served on any part of the said river upon any person, or property of any person, not a citizen of Maryland, indebted to any citizen of Virginia, or charged with injury having been by him committed; and process from the state of Maryland may be served on any part of the said rivers upon any person, or property of any person, not a citizen of Virginia, indebted to a citizen of Maryland, or charged with injury having been by him committed. And in all cases of trial in pursuance of the jurisdiction settled by this compact, citizens of either state shall attend as witnesses in the other, upon a summons from any court or magistrate having jurisdiction, being served by a proper officer of the county where such citizen shall reside.

TWELFTH, The citizens of either state having lands in the other, shall have full liberty to transport to their own state the produce of such lands, or to remove their effects, free from any duty, tax, or charge whatsoever, for the liberty to remove such produce or effects.

THIRTEENTH, These articles shall be laid before the legislatures of Virginia and Maryland, and their approbation being obtained, shall be confirmed and ratified by a law of each state, never to be repealed or altered by either without the consent of the other. And whereas this general assembly are of opinion, that the said compact is made on just and mutual principles, for the true interest of both governments, and if executed with good faith, will perpetuate harmony, friendship and good offices, between the two states, so essential to the prosperity and happiness of their people;

II. BE IT ENACTED, by the General Assembly of Maryland, That the said compact is hereby approved, confirmed and ratified, and that as soon as the said compact shall be approved, confirmed and ratified, by the general assembly of the commonwealth of Virginia, thereupon, and immediately thereafter, every article, clause, matter and thing, in the same compact contained, shall be obligatory on this state and the citizens thereof, and shall be for ever faithfully and

inviolably observed and kept by this government, and all its citizens, according to the true intent and meaning of the said compact; and the faith and honour of this State is hereby solemnly pledged and engaged to the general assembly of the commonwealth of Virginia, and the government and citizens thereof, that this law shall never be repealed or altered by the legislature of this government, without the consent of the government of Virginia.

CHAPTER 247.

ACTS OF 1874.

AN ACT to designate the arbitrators to ascertain and fix the boundary between the States of Virginia and Maryland.

Whereas, a controversy exists as to the true line of the boundary between the States of Virginia and Maryland; and,

Whereas, the State of Virginia, by an act of its General Assembly, entitled an act to designate the arbitrators to ascertain and fix the boundary between the States of Maryland and Virginia, approved on the twenty-eighth day of March, in the year of our Lord, one thousand eight hundred and seventy-four, has declared its willingness to submit the said controversy to arbitration, and to accept as final and conclusive, such award as may be made in the premises; therefore—

SECTION 1. Be it enacted by the General Assembly of Maryland, That the settlement and determination of the true line of boundary between the States of Virginia and Maryland, be referred to the Honorable Jeremiah S. Black, of Pennsylvania, and the Honorable William A. Graham, of North Carolina, and a third person to be selected by them, who are hereby requested to act as arbitrators, and to ascertain and determine the true line of boundary between the said States of Virginia and Maryland, and deliver their award in writing, any two of them concurring therein. Each State shall have the right to be represented by

counsel before said arbitrators, subject to such regulations as they may prescribe; and the State of Maryland hereby pledges its faith to accept and abide by the award of said arbitrators in the premises as final and conclusive; provided, however, that neither of the States, nor the citizens thereof, shall, by the decision of the said arbitrators, be deprived of any of the rights and privileges enumerated and set forth in the compact between them entered into in the year seventeen hundred and eighty-five, but that the same shall remain to and be enjoyed by the said States and the citizens thereof, forever.

SECTION 2. And be it enacted, That until the final adjustment and settlement of the said line of boundary, the temporary line across the Chesapeake Bay, known as the Lovett-Davidson line, shall be faithfully observed by the citizens of the said two States; and the Governor is hereby requested to forward a copy of this act to the Governor of Virginia.

SECTION 3. And be it enacted, That this act shall be in force from its passage.

Approved April 11th, 1874.

CHAPTER 198.

ACTS OF 1876.

AN ACT supplementary to an act to designate the arbitrators to ascertain and fix the boundary between the States of Virginia and Maryland, approved April the eleventh, eighteen hundred and seventy-four.

WHEREAS, by an act of the General Assembly of Maryland, passed at the January session, eighteen hundred and seventy-four, chapter two hundred and forty-seven, entitled "an act to designate the arbitrators to ascertain and fix the boundary between the States of Virginia and Maryland;" it was provided, that the settlement and determination of the true line of boundary between the States of Virginia and Maryland, be referred to the Honorable Jere-

miah S. Black, of Pennsylvania, and the Honorable William A. Graham, of North Carolina, and a third person to be selected by them, and they did select accordingly as a third person, the Honorable Charles A. Jenkins, of Georgia, but the said William A. Graham has since departed this life; now for filling the vacancy thereby created, and for carrying out the purposes of the said act; therefore,

Section 1. Be it enacted by the General Assembly of Maryland, with the concurrence of the State of Virginia, That the said Honorable Jeremiah S. Black, and the Honorable James B. Beck, of Kentucky, and the said Honorable Charles A. Jenkins, do proceed to ascertain and determine the true line of boundary between the States of Virginia and Maryland, and do make and deliver their award in writing, any two of them concurring therein. Each State shall have the right to be represented by counsel before the arbitrators under such regulations as they may prescribe, and the State of Maryland hereby pledges its faith to accept and abide by the award of the said arbitrators in the premises, as final and conclusive; provided, however, that neither of the said States, nor the citizens thereof, shall by the decision of the said arbitrators, be deprived of any of the rights and privileges enumerated and set forth in the compact between them, entered into in the year seventeen hundred and eighty-five; but that the same shall remain to, and be enjoyed by the said States, and the citizens thereof forever; and provided further, that the landholders on either side of the line of boundary between the said States as the same may be ascertained and determined by the said award, shall in no manner be disturbed thereby in their title to and possession of their lands, as they may be at the date of said award, but shall in any case, hold and possess the same as if their said titles and possession had been derived under the laws of the State, in which, by the fixing of the said line by the terms of the said award, they may be ascertained to be.

Sec. 2. And be it enacted, That until the final adjustment and settlement of the said line of boundary, the temporary line across the Chesapeake bay, known as the Lovett-

Davidson line, shall be faithfully observed by the citizens of the said two States.

Sec. 3. And be it enacted, That if, in the recess of the Legislature a vacancy shall occur by reason of the death, resignation or refusal to act, of any of the persons herein appointed to settle and determine the said line of boundary as aforesaid, a fit person or persons shall be appointed by the concurrent action of the Governor of Maryland, and the Governor of Virginia, or of the Legislature of the latter State, as the case may be, who with those already appointed, and who may act in the premises, shall exercise the powers and perform the duties defined and imposed in the first section of this act.

Sec. 4. And be it enacted, That the Governor is hereby requested to forward a copy of this act to the Governor of Virginia, with a request that he present the same to the General Assembly of that State, and that he communicate to the Honorable James B. Beck, his appointment under this act, and request his acceptance of the same.

Sec. 5. And be it enacted, That this act shall take effect from the date of its passage.

Approved April 3, 1876.

CHAPTER 274.

ACTS OF 1878.

AN ACT to approve, confirm and ratify the award made by the Honorable Jeremiah S. Black, James B. Beck and Charles A. Jenkins, arbitrators appointed to ascertain and fix the boundary between the States of Virginia and Maryland.

WHEREAS, by an act of the General Assembly of Maryland, passed at January session, eighteen hundred and seventy-six, chapter one hundred and ninety-eight, it was provided that the settlement and determination of the true line of boundary between the States of Virginia and Mary-

land should be referred to the Honorable Jeremiah S. Black, of Pennsylvania, the Honorable James B. Beck, of Kentucky, and the Honorable Charles A. Jenkins, of Georgia, with power to make and deliver their award in writing, any two of them concurring therein, and did thereby pledge the faith of this State to accept and abide by the award of said arbitrators, as to said boundary line as final and conclusive, with the proviso and saving clause, as to private rights, as in the said act set forth; and, whereas the said arbitrators did proceed in the premises to examine into and ascertain the true line of said boundary, and did award as to the same in words following, to wit:

Here follows text of award—see Appendix p. 26.

And which said award is now deposited with the map accompanying the same in the Land Office of this State, among the muniments of title; now, therefore,

Section 1. *Be it enacted by the General Assembly of Maryland*, That the said award is hereby approved, accepted, confirmed and ratified, and that as soon as the same is also approved, accepted, confirmed and ratified by the General Assembly of the State of Virginia, and by the Congress of the United States, thereupon and immediately thereafter the said award and survey matter and things therein contained shall be obligatory on the State and the citizens thereof, and shall be forever faithfully and inviolably observed, and kept by this State and all its citizens, according to the true intent and meaning of the same, and to that end the faith of this State shall stand pledged.

Sec. 2. *And be it enacted*, That the Governor is hereby requested to forward a copy of this act to the Governor of Virginia, with a request that the General Assembly of said State shall also enact a law in accordance herewith; and, shall, also, forward a copy to our Senators and Representatives in Congress, with a request that they procure such legislation on the part of the United States as may be needful in the premises for their assent to and ratification of said award.

Approved April 4, 1878.

CHAPTER 374.

ACTS OF 1878.

AN ACT to provide for surveying and marking the boundary line between the States of Maryland and Virginia, as ascertained and determined by the arbitrators heretofore appointed on the part of Maryland and Virginia respectively.

Whereas, the arbitrators to whom were submitted the controversies between the States of Maryland and Virginia, concerning their territorial limits, have filed their award determining and declaring the boundary line of the said States, so far as they are conterminous; and whereas it is necessary that said boundary line should be surveyed and designated by monuments of a durable character, so that its precise location may be readily ascertained by the citizens of each of the aforesaid States; therefore—

Section 1. Be it enacted by the General Assembly of Maryland, That when the said award shall have been accepted by the State of Virginia, and shall have been ratified by Congressional legislation, it shall then be the duty of the Governor of this State to nominate and appoint a commissioner, who, together with a commissioner or commissioners to be appointed by said State of Virginia, shall, in concert with each other, have the said line surveyed, and so far as practicable and necessary, shall have the same defined and marked by suitable monuments; and to the end that said line may be run by persons of the highest skill, and as the same is a matter of federal concern, the Governor is directed to solicit the War Department at Washington to detail one or more of the topographical engineers of the United States, who shall run, mark and bound said line with such monuments to be placed therein, of the kind, number and description that the said engineers shall order and direct.

Approved April 1, 1878.

CHAPTER 451.

ACTS OF 1878.

AN ACT providing for copying and distributing the maps accompanying the award of commissioners to settle the boundary line between the State of Maryland and Virginia, filed the nineteenth day of January, eighteen hundred and seventy-seven.

Section 1. Be it enacted by the General Assembly of Maryland, That the Commissioner of the Land Office be and he is hereby authorized and directed to have made, under his hand and seal, and under the hand and seal of the Governor of Maryland, thirty copies of the map accompanying the award of commissioners to settle the boundary line between the State of Maryland and Virginia, filed the nineteenth day of January, eighteen hundred and seventy-seven; provided the cost of the same shall not exceed the sum of one hundred and fifty dollars.

Sec. 2. And be it enacted, That one copy shall be sent to the Clerk of the Circuit Court for each of the counties of the State and Baltimore city, one copy to the Maryland Historical Society, one copy to the Peabody Institute, one copy to the Johns Hopkins University, and one copy to the Library of Congress, and that the Comptroller of the State be and he is hereby authorized to issue, upon the certificate of the Commissioner of the Land Office, his warrant upon the Treasurer for the sum of one hundred and fifty dollars.

Sec. 3. And be it enacted, That this act shall take effect from the date of its passage.

Approved April 5, 1878.

CHAPTER 50.

ACTS OF 1929.

AN ACT to define, survey and mark the boundary of Virginia and Maryland along the Potomac River as laid down by the Award of 1877, and to authorize the expenditure necessary therefor, and such action as may be necessary to secure the approval by the Congress of the United States of the line so surveyed and marked.

WHEREAS, the boundary line described in the Award of the Arbitrators authorized by the Acts of the General Assemblies of Maryland and Virginia, which Award was accepted by Maryland (Acts of Assembly, 1877-1878, Chapter 247*), and by Virginia (Acts of Assembly, 1877-1878, Chapter 246), and approved by Congress (March 3, 1879) has never been surveyed and monumented along the Potomac River; and

WHEREAS, because of uncertainties as to the actual position of such unmarked line, which was only partially represented on the map accompanying and made part of the Award of 1877 above described, the Governors of Virginia and Maryland have caused the entire line along the Potomac River to be drawn on maps by Edward B. Mathews, State Geologist of the State of Maryland, and Wilbur A. Nelson, State Geologist of the State of Virginia, in accordance with their best judgment of the Award of 1877, now therefore

SECTION 1. Be it enacted by the General Assembly of Maryland, That the line laid down by Edward B. Mathews and Wilbur A. Nelson be approved as a just and fair expression of the Award of 1877, regarding the boundary line along the Potomac River in so far as the same was not represented on the map accompanying the Award of 1877, and that the said line be and is hereby accepted and declared to be a true representation of part

* This is an error and should read 274.

of the boundary line between Virginia and Maryland already accepted by both states.

SEC. 2. And be it further enacted, That when the line shall have been ratified by both states the Governor of Maryland be, and he is hereby authorized and directed to co-operate with the Governor of Virginia in soliciting the U. S. Coast and Geodetic Survey or other agency of the Federal Government to supply the necessary skilled and impartial engineers who shall survey said line and properly mark and document it on the ground with sufficient points to insure that it may be readily recognized or restored if destroyed. The work of the engineers shall also include the preparation of a report giving an account of their work, and a full description of each and every location permanently marked by them.

SEC. 3. And be it further enacted, That the Governor of Maryland be and he is hereby authorized and instructed to enter into agreements or contracts in the name of the State of Maryland, to pay the share of the expenses of such surveying and marking of the line as above described as is properly chargeable to the State of Maryland, and further that he is hereby empowered to appoint, if he deems it advisable so to do, a competent Commissioner on the part of the State of Maryland, who shall represent the interests of the State during the surveying and marking of said line.

SEC. 4. And be it further enacted, That when the said line is surveyed and marked upon the ground the Governor of Maryland be and he is hereby authorized and instructed to take such action in co-operation with the Governor of Virginia as may be necessary to secure the approval by the Congress of the United States of the line so surveyed and marked in order that thereafter there may not arise any question of controversy to disturb the comity and mutual good will so essential to the well being of contiguous states.

Approved March 8, 1929.

SENATE JOINT RESOLUTION 17

ACT OF 1945.

A Joint Resolution authorizing and directing the Governor to appoint a Commission to confer and act jointly with a similar Commission of Virginia for the purpose of restudying the Compact of 1785 and the concurrent legislation respecting the fisheries of the Potomac River and Chesapeake Bay and to report as to the need for additional legislation with respect thereto and as to the desirability of creating a joint inter-State authority to consider the problems in connection with the fisheries of the Potomac River and the Chesapeake Bay and to submit a report containing its conclusions and recommendations.

WHEREAS, on the twenty-eighth day of March in the year 1785 the states of Maryland and Virginia entered into a compact to regulate and settle the jurisdiction and navigation of the Potomac and the lower part of the Chesapeake Bay; and

WHEREAS, That compact did establish that the right of fishing in the river shall be common to, and equally enjoyed by, the citizens of both states, and that all laws and regulations which may be necessary for the preservation of fish shall be made with the mutual consent and approbation of both states; and

WHEREAS, since that time the fisheries of the Potomac River and Chesapeake Bay have greatly developed, increased, and then declined with a corresponding and continuing increase in the problems having to do with the regulation, conservation, and development of the fisheries; and

WHEREAS, it is confidently believed that a better co-ordination of legislation, regulations and law enforcement by the two states will result in the conservation and restoration of the fisheries to the benefit of the seafood in-

dustry of the nation as well as to the states of Maryland and Virginia; and

WHEREAS, such results can best be accomplished through the cooperative efforts of the two states by or through a joint or common agency; now therefore

Be it resolved by the General Assembly of Maryland, That the Governor of Maryland be and he is hereby authorized and directed to appoint a Commission of three citizens of this State to serve without compensation and to confer with a similar Commission of three citizens of the Commonwealth of Virginia to be appointed by the Governor of Virginia for the purposes hereinafter set forth:

- (1) To restudy the compact of 1785 and the concurrent legislation enacted thereunder with respect to the fisheries of the Potomac river and Chesapeake Bay;
- (2) To consult and advise with the pertinent State, interstate and Federal agencies and citizens concerned therewith;
- (3) To determine whether improvements in the administration and enforcement of existing laws are needed, or whether the concurrent laws of the two states need to be amended, or whether the best interests of the fisheries and of the people of the two states will be served by granting additional powers to existing State or interstate agencies, or whether a new joint commission, or interstate authority should be created by compact or reciprocal legislation between the two states and empowered to study, determine policy and make and enforce regulations applicable to the fisheries of the tidewaters of the Potomac River and of the tidewaters of the Chesapeake Bay, within the jurisdiction of the two states;
- (4) To bring the problems and responsibilities facing the two states to the attention of the public through the press, radio, schools, civic organizations, and any other means of disseminating information; and

Be it further resolved, That such Commission shall elect from its members a Chairman and a Vice-Chairman and shall present to the Governors of the two states from time to time requests for such clerical and other assistance as it may require and the Governor of Maryland is hereby authorized to make available to the Commission such assistance to the end that it may report its conclusions as to policy and its proposals as to legislation to the Governors and legislatures of the two states not later than January 1, 1946; and

Be it further resolved, That in fitting commemoration of the one hundred and sixtieth anniversary of the signing of the original Compact at Mount Vernon the organization meeting of the herein established joint interstate Commission be held at Mount Vernon, Virginia, on the 28th day of March, 1945, and that the Governors of Maryland and Virginia be invited to acclaim this occasion by proclamation and to arrange for the proper participation of their states in this initial meeting of the joint Commission and in any other ceremonies marking the 160th anniversary of the signing of the Compact of 1785 between Maryland and the Commonwealth of Virginia.

Approved April 23, 1945.

ACTS OF THE GENERAL ASSEMBLY OF VIRGINIA.

CHAPTER 135.

ACTS OF 1874.

AN ACT to Designate the Arbitrators to Ascertain and fix the Boundary between the States of Maryland and Virginia. Approved March 28, 1874.

Whereas, a controversy exists as to the true line of boundary between the states of Maryland and Virginia; and whereas, the State of Maryland, by resolution of its general assembly now in session, has declared its willingness to submit the said controversy to arbitration, and to

accept as final and conclusive such award as may be made in the premises: therefore.

1. Be it enacted by the general assembly of Virginia, That the settlement and determination of the true line of boundary between the states of Maryland and Virginia be referred to the Honorable Jeremiah S. Black of Pennsylvania, and the Honorable William A. Graham of North Carolina, and a third person to be selected by them, who are hereby requested to act as arbitrators, and to ascertain and determine the true boundary between the said states of Virginia and Maryland, and to make and deliver their award in writing, any two of them concurring therein. Each state shall have the right to be represented by counsel before said arbitrators subject to such regulations as they may prescribe. And the State of Virginia hereby pledges its faith to accept and abide by the award of said arbitrators in the premises, as final and conclusive; provided, further, that neither of the said states, nor the citizens thereof, shall by the decision of the said arbitrators, be deprived of any of the rights and privileges enumerated and set forth in the compact between them entered into in the year one thousand seven hundred and eighty-five, but that the same shall remain to and be enjoyed by the said states and the citizens thereof forever.

2. And be it further enacted, That until the final adjustment and settlement of the said line of boundary, the temporary line across the Chesapeake Bay known as the Lovell-Davidson line shall be faithfully observed by the citizens of the said two states.

3. The governor is hereby requested to forward a copy of this act to the governor of Maryland, with a request that he present the same to the general assembly of that state for their concurrent action in the premises.

4. This act shall be in force from its passage.

CHAPTER 48.

1875-1876.

AN ACT to amend and re-enact an act to designate the Arbitrators to Ascertain and Fix the Boundary of the States of Maryland and Virginia, approved March twenty-eighth, eighteen hundred and seventy-four. Approved, Feb. 10, 1876.

Whereas by the act of the general assembly, approved March twenty-eighth, eighteen hundred and seventy-four entitled an act to designate the arbitrators to ascertain and fix the boundary between the states of Maryland and Virginia, it was provided that the settlement and determination of the true line of boundary between the state of Maryland and Virginia be referred to the Honorable Jeremiah S. Black of Pennsylvania, and the Honorable William A. Graham of North Carolina, and a third person, to be selected by them, and they did select accordingly, as a third person, the Honorable Charles A. Jenkins of Georgia, but the said William A. Graham has since depart(ed) this life; now, for filling the vacancy thereby created, and for carrying out the provisions of this said act; therefore

1. Be it enacted, with the concurrence of the state of Maryland, That the Honorable Jeremiah S. Black and Honorable J. B. Beck of Kentucky, with the said Honorable Charles A. Jenkins, as arbitrators, do proceed to ascertain and determine the true line of boundary between the said states of Maryland and Virginia, and to make and deliver their award in writing, any two of them concurring therein. Each state shall have the right to be represented by counsel before the arbitrators, under such regulations as they may prescribe. And the state of Virginia hereby pledges its faith to accept and abide by the award of the said arbitrators in the premises, as final and conclusive; provided however, that neither of the said states, nor the citizens thereof, shall by the decision of the said arbitrators be deprived of

any of the rights and privileges enumerated and set forth in the compact between them entered into in the year seventeen hundred and eighty-five, but that the same shall remain to and be enjoyed by the said states and the citizens thereof forever: and provided further, that the landholders on either side of the line of boundary between the said states, as the same be ascertained and determined by the said award, shall in no manner be disturbed thereby in their title to and possession of their lands, as they may be at the date of said award but shall in any case hold and possess the same, as if their said titles and possessions had been derived under the laws of the state in which, by the fixing of the said line by the terms of the said award, they may be ascertained to be.

2. And be it further enacted, That until the final adjustment and settlement of the said line of boundary, the temporary line across the Chesapeake bay, known as the Lovell-Davidson line, shall be faithfully observed by the citizens of the said two states.

3. Be it further enacted, That if, in the recess of the legislature, a vacancy shall occur by reason of the death, resignation, or refusal to act of any of the persons herein appointed to settle and determine the said line of boundary as aforesaid, a fit person or persons shall be appointed by the concurrent action of the governor of Virginia and of the governor of Maryland, or of the legislature of the latter state, as the case may be, who with those already appointed and who may act in the premises, shall exercise the powers and perform the duties defined and imposed in the first section of this act.

4. The governor is hereby request(ed) to forward a copy of this act to the governor of Maryland, with the request that he present the same to the general assembly of that state for their concurrence in the premises, and that he communicate to the Honorable James B. Beck his appointment under this act and request his acceptance of the same.

5. This act shall be in force from its passage.

CHAPTER 247.

ACTS OF 1876-1877.

AN ACT to authorize the secretary of the commonwealth to furnish the clerks of the county seats of Accomack, Northumberland, Westmoreland, King George, Stafford, Prince William, Fairfax, Alexandria, Middlesex, Mathews, Gloucester, and Loudoun, with copies of the map returned by the commissioners to arbitrate the boundary line between Virginia and Maryland. Approved March 29, 1877.

1. Be it enacted by the general assembly of Virginia, That the secretary of the commonwealth be, and he is hereby authorized and directed to have printed one hundred photolithograph copies of the map returned by the commissioners to arbitrate the boundary line between the states of Maryland and Virginia, showing the true boundary line between said states; and when so printed and made out, the said secretary shall furnish each of the clerks of the county courts of Accomack, Northumberland, Westmoreland, King George, Stafford, Prince William, Fairfax, Alexandria, Middlesex, Mathews, Gloucester, and Loudoun with duplicate copies of the same to be preserved by said clerks in their respective offices.
2. To defray the cost of expenses to printing said maps the auditor of public accounts is hereby authorized and directed to issue his warrant on the treasury for the sum of two hundred dollars, to be paid out of any money in the treasury not otherwise appropriated.
3. This act shall be in force from and after its passage.

CHAPTER 246.

ACTS OF 1877-1878.

AN ACT to approve, confirm, and ratify the award made by the Arbitrators appointed to ascertain and fix the boundary between the states of Virginia and Maryland, and procure the assent of the Congress of the United States thereto. Approved March 14, 1878.

Whereas, by an act of the general assembly of Virginia, approved March twenty-eighth, eighteen hundred and seventy-four, and an act amendatory thereof approved February tenth, eighteen hundred and seventy-six, it was provided that the settlement and determination of the true line of boundary between the states of Virginia and Maryland should be referred to the Honorable Jeremiah S. Black of Pennsylvania, the Honorable James B. Beck of Kentucky, and the Honorable Charles A. Jenkins of Georgia, with power to make and deliver their award in writing, any two of them concurring therein; and did thereby pledge the faith of this state to accept and abide by the award of said arbitrators, as to said boundary line, as final and conclusive, with the proviso and saving clauses as to private rights as in said acts set forth; and whereas the said arbitrators did proceed in the premises to examine into and ascertain the true line of said boundary, and did award as to the same in words following, to wit

(Here follows text of award—See Appendix p. 26).

And which award is now deposited, with the map accompanying the same, in the office of the Secretary of the Commonwealth; now, therefore,

1. Be it enacted by the general assembly of Virginia, That the said award is hereby approved, accepted, confirmed and ratified, and that as soon as the same is also approved, accepted, confirmed, and ratified by the general assembly of the state of Maryland, and by the Congress of the United States, thereupon and immediately thereafter the said award and survey, matter and thing therein

contained, shall be obligatory on the state and the citizens thereof, and shall be forever faithfully and inviolably observed and kept by this state and all its citizens, according to the true intent and meaning of the same, and to that end the faith of this state shall stand pledged.

2. The governor is hereby requested to forward a copy of this act to the governor of Maryland, with a request that the general assembly of said state shall also enact a law in accordance herewith; and shall also forward a copy to our senators and representatives in Congress, with the request that they procure such legislation on the part of the United States as may be needful in the premises for their assent to and ratification of said award.

3. This act shall be in force from its passage.

CHAPTER 477.

ACTS OF 1928.

An Act to define and to provide for a survey and marking of the boundary of Virginia and Maryland along the Potomac river as laid down by the award of 1877 and to authorize the expenditure necessary therefor.

Approved March 26, 1928.

Whereas, the boundary line described in the award of the arbitration authorized by the general assembly of Maryland and Virginia, which award was accepted by Maryland (acts of assembly eighteen hundred and seventy-eight, chapter two hundred and forty-seven),* and by Virginia (acts of assembly eighteen hundred and seventy-seven and eighteen hundred and seventy-eight, chapter two hundred and forty-six), and approved by congress March third, eighteen hundred and seventy-nine, has never been surveyed and monumented along the Potomac river.

* This is an error and should read two hundred and seventy-four.

Whereas, because of uncertainties as to the actual position of such unmarked line, which was only partially represented on the map accompanying and made part of the award of eighteen hundred and seventy-seven, above described, the governors of Virginia and Maryland have caused the entire line along the Potomac river to be drawn on maps by Edward B. Mathews, geologist, State of Maryland, and by Wilbur A. Nelson, State geologist of Virginia, in accordance with their best judgment of the award of eighteen hundred and seventy-seven; now, therefore.

1. Be it enacted by the general assembly of Virginia as follows:

Section 1. The line laid down by Edward B. Mathews and Wilbur A. Nelson is hereby approved as a just and fair expression of the award of eighteen hundred and seventy-seven regarding the boundary line along the Potomac river in so far as the same was not represented on the map accompanying the award of eighteen hundred and seventy-seven and the said line is hereby accepted and declared to be a true representation of part of the boundary line between Virginia and Maryland already accepted by both States.

Section 2. If and when the aforesaid line shall have been ratified by both States, the governor of Virginia is hereby authorized and directed to co-operate with the governor of Maryland in soliciting the United States coast and geodetic survey or other agencies of the federal government to supply the necessary skill and impartial engineers who shall survey said line and properly mark and document it on the ground with sufficient points to insure that it may be readily recognized or restored if destroyed. The work of the engineers shall also include the presentation of a report giving an account of their work and a full description of each and every location permanently marked by them.

Section 3. The governor is hereby authorized and directed to enter into an agreement or contract in the name of the State of Virginia to pay such part of the expenses incur-

red in making said survey and marking the line thereof, as above described, as are properly chargeable in the State of Virginia, and the governor is further authorized, if he deems it advisable to do so, to appoint a competent commissioner who shall represent the interest of the State of Virginia during the survey and marking of said line. It is expressly provided, however, that the expense incurred on behalf of the State of Virginia, under the provisions of this act, shall not exceed ten thousand dollars and shall be paid upon the order of the governor out of the appropriation herein made out of the game protection fund created under the provisions of an act approved March twenty-fourth, nineteen hundred and twenty-six (acts of assembly, nineteen hundred and twenty-six, chapter two hundred and ninety-five, pages five hundred and eleven—five hundred and fifteen).

Section 4. When the said line is surveyed and marked upon the ground the governor is hereby authorized and directed to take such action in co-operation with the governor of Maryland as may be necessary to secure the approval by congress of the line so surveyed and marked, in order that thereafter there may not arise any question of controversy to disturb the comity and mutual goodwill so essential to the well being of contiguous States.

Section 5. For the purpose of carrying out the provisions of this act there is hereby appropriated out of the aforesaid game protection fund the sum of ten thousand dollars, or so much thereof as may be necessary.

AWARD OF THE ARBITRATORS, 1877.

And now, to wit, January 16, Anno Domini 1877, the undersigned, being a majority of the arbitrators to whom the States of Virginia and Maryland, by acts of their respective Legislatures, submitted the controversies concerning their territorial limits, with authority to ascertain and determine the true line of boundary between them, having heard the allegations of the said States and examined the

proofs on both sides, do find, declare, award, ascertain, and determine that the true line of boundary between the said States, so far as they are conterminous with one another, is as follows, to wit:

Beginning at the point on the Potomac river where the line between Virginia and West Virginia strikes the said river at low-water mark, and thence, following the meanderings of said river by the low-water mark, to Smith's Point, at or near the mouth of the Potomac, in latitude $37^{\circ} 53' 08''$ and longitude $76^{\circ} 13' 46''$; thence crossing the waters of the Chesapeake bay, by a line running north $65^{\circ} 30'$ east, about nine and a half nautical miles, to a point on the western shore of Smith's Island, at the north end of Sassafras Hammock, in latitude $37^{\circ} 57' 13''$, longitude $76^{\circ} 02' 52''$; thence across Smith's Island south $88^{\circ} 30'$ east five thousand six hundred and twenty yards, to the center of Horse Hammock, on the eastern shore of Smith's Island, in latitude $37^{\circ} 57' 08''$, longitude $75^{\circ} 59' 20''$; thence south $79^{\circ} 30'$ east four thousand eight hundred and eighty yards, to a point marked "A" on the accompanying map, in the middle of Tangier Sound, in latitude $37^{\circ} 56' 42''$, longitude $75^{\circ} 56' 23''$, said point bearing from Jane's Island light south 54° west, and distant from that light three thousand five hundred and sixty yards; thence south $10^{\circ} 30'$ west four thousand seven hundred and forty yards, by a line dividing the waters of Tangier sound, to a point where it intersects the straight line from Smith's Point to Watkins' Point, said point of intersection being in latitude $37^{\circ} 54' 21''$, longitude $75^{\circ} 56' 55''$, bearing from Jane's Island light south 29° west, and from Horse Hammock south $34^{\circ} 30'$ east. This point of intersection is marked "B" on the accompanying map. Thence north $85^{\circ} 15'$ six thousand seven hundred and twenty yards along the line above mentioned, which runs from Smith's Point to Watkins' Point until it reaches the latter spot, namely, Watkins' Point, which is in latitude $37^{\circ} 54' 38''$, longitude $75^{\circ} 52' 44''$. From Watkins' Point the boundary line runs due east seven thousand eight hundred and eighty yards, to a point where it meets a line running through the middle of Pocomoke sound, which is marked "C" on the accompanying map,

and is in latitude $37^{\circ} 54' 38''$, longitude $75^{\circ} 47' 50''$; thence, by a line dividing the waters of Pocomoke sound, north $47^{\circ} 30'$ east five thousand two hundred and twenty yards, to a point in said sound marked "D" on the accompanying map, in latitude $37^{\circ} 56' 25''$, longitude $75^{\circ} 45' 26''$; thence following the middle of the Pocomoke river by a line of irregular curves, as laid down on the accompanying map, until it intersects the westward protraction of the boundary line marked by Scarborough and Calvert May 28, 1668, at a point in the middle of the Pocomoke river and in latitude $37^{\circ} 59' 37''$, longitude $75^{\circ} 37' 04''$; thence, by the Scarborough and Calvert line, which runs $5^{\circ} 15'$ north of east, to the Atlantic ocean.

The latitudes, longitudes, courses, and distances here given have been measured upon the Coast Chart No. 33 of the United States Coast Survey, (sheet No. 3, Chesapeake Bay) which is herewith filed as part of this award and explanatory thereof. The original charter line is marked upon the said map and shaded in blue. The present line of boundary, as ascertained and determined, is also marked and shaded in red, while the yellow indicates the line referred to in the compact of 1785 between Smith's Point and Watkins' Point.

In further explanation of this award, the arbitrators deem it proper to add that—

1. The measurements being taken and places fixed according to the Coast Survey, we have come as near to perfect mathematical accuracy as in the nature of things is possible. But in case of any inaccuracy in the described course of length of a line or in the latitude or longitude of a place the natural objects called for must govern.
2. The middle thread of Pocomoke river is equidistant as nearly as may be between the two shores without considering arms, inlets, creeks, or affluents as parts of the river, but measuring the shore lines from headland to headland.
3. The low-water mark on the Potomac, to which Virginia has a right in the soil, is to be measured by the same

rule, that is to say, from low-water mark at one headland to low-water mark at another, without following indentations, bays, creeks, inlets, or affluent rivers.

4. Virginia is entitled not only to full dominion over the soil to low-water mark on the south shore of the Potomac, but has a right to such use of the river beyond the line of low-water mark as may be necessary to the full enjoyment of her riparian ownership, without impeding the navigation or otherwise interfering with the proper use of it by Maryland, agreeably to the compact of 1785.

In testimony whereof we have here unto set our hands the day and year above written.

J. S. BLACK,

Of Pennsylvania.

CHAS. J. JENKINS,

Of Georgia.

A. W. GRAHAM,

Secretary.

ACTS OF CONGRESS

ACT OF MARCH 3, 1879

CHAPTER 196, 20 STAT. AT LARGE 481.

AN ACT giving the consent of Congress to an agreement or compact entered into between the States of Virginia and Maryland respecting the boundary between said States.

Whereas arbitrators duly appointed on the part of the State of Virginia and on the part of the State of Maryland for the purpose of ascertaining and fixing the boundary between the States of Virginia and Maryland, did proceed in the premises to examine into and ascertain the true limits of said boundary, and did award as to the same in words following to wit:

“Award. (See this appendix page 26)”.

And whereas the said award has been ratified and confirmed by the Legislature of the States of Virginia and Maryland respectively:

Be it enacted by the Senate, and House of Representatives of the United States of America in Congress assembled, That the consent of the Congress of the United States is hereby given to the said agreement or award, and to each and every part and article thereof; Provided, that nothing therein contained shall be construed to impair or in any manner affect any right to jurisdiction of the United States in and over the islands and waters which form the subject of the said agreement or award.

Approved, March 3, 1879.

